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***VIA CERTIFIED MAIL -
RETURN RECEIPT REQUESTED***

July 17, 2012

City Clerk
City Council
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear City Clerk and Members of the City Council:

NOTICE

The Clean Water Act ("CWA") § 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator, the Environmental Protection Agency ("EPA") and the State in which the violations occur.

This NOTICE is written on behalf of Northern California River Watch ("River Watch") which hereby places the City of Santa Clara, hereafter referred to as "the Discharger" on notice, that following the expiration of sixty (60) days from the date of this NOTICE, River Watch intends to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, a Federal or State Order or Plan issued under the CWA, in particular, but not limited to CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Regional Water Quality Control Board, San Francisco Bay Region's Water Quality Control Plan, or "Basin Plan," as exemplified by violations of permit conditions or limitations in the Discharger's National Pollutant Discharge Elimination System ("NPDES") Permits, pertaining to the Discharger's operation of its sanitary sewage collection system.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharge of pollutants is prohibited with the exception of enumerated statutory exceptions. One such exception authorizes a polluter, who has been issued a permit pursuant to CWA § 402, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a polluter in violation of 33 U.S.C. § 1311(a) and thus in violation of the CWA. Private parties may bring citizens' suits pursuant to 33 U.S.C. § 1365 to enforce effluent standards or limitations, which are defined as including violations of 33 U.S.C. § 1311(a) and 33 U.S.C. § 1365(f)(1).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the EPA to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria. See 33 U.S.C. § 1342(b). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards, to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating discharges in the region at issue in this NOTICE is the Regional Water Quality Control Board, San Francisco Bay Region ("RWQCB").

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The specific standard, limitation, or order alleged to have been violated.*

To comply with this requirement River Watch identifies herein the NPDES Permits of the City of Santa Clara (in conjunction with the San Jose/Santa Clara Water Pollution Control Plant,) which govern the Discharger's operation of its sewage collection system, and also specifically identifies the applicable permit standard, limitation or condition being violated. A violation of the Permit is a violation of the CWA.

2. *The activity alleged to constitute a violation.*

Most often the Discharger's NPDES Permit limitations being violated are self-explanatory and an examination of language in the Permit is sufficient to inform the Discharger of the violation, especially since the Discharger is responsible for complying with that Permit conditions. In addition, River Watch has set forth narratives describing with particularity the activities leading to violations and has incorporated by reference the

Discharger's own records and other public documents in the Discharger's possession or otherwise available to the Discharger regarding its NPDES Permit, compliance with that Permit and any other information designed to inform the Discharger or the public.

3. *The person or persons responsible for the alleged violation.*

The person or persons responsible for the alleged violations is the City of Santa Clara, identified and those of its employees responsible for compliance with its NPDES Permits.

4. *The location of the alleged violation.*

The location or locations of the various violations are identified in the Discharger's Permits and also in records created and/or maintained by or for the Discharger which relate to the Discharger's sewer collection system and related activities as further described in this NOTICE.

5. *The date or dates of violation or a reasonable range of dates during which the alleged activity occurred.*

River Watch has examined records of the RWQCB and the Discharger for the period from July 7, 2007 through July 7, 2012. The range of dates covered by this NOTICE is from July 7, 2007 through July 7, 2012. River Watch will from time to time update this NOTICE to include all violations which occur after the range of dates currently covered by this NOTICE. Some of the violations are continuous and therefore each day constitutes a violation.

6. *The full name, address, and telephone number of the person giving notice.*

The full name, address, and telephone number of the person giving notice appears near the end of this NOTICE under CONTACT INFORMATION.

DISCHARGER'S OPERATION

The Discharger owns the San Jose/Santa Clara Water Pollution Control Plant ("Plant") through a Joint Powers Agreement with the City of San José. The City of San José operates the Plant as the administering agency of the Joint Power Agreement. The City of San José and the City of Santa Clara individually own and operate their respective sewage collection systems. The Discharger's operation of its sewage collection system is currently regulated under Order No. R2-2009-0038, NPDES Permit No. CA0037842, (previously Order No. R2-2003-0085) which also regulates the Plant. The Discharger's operation of its

sewage collection system is also regulated under the Statewide General Waste Discharge Requirements For Sanitary Sewer Systems, Order No. 2006-003-DWQ ("Statewide WDR,") adopted on May 2, 2006.

The Discharger provides sewage collection service to a population of approximately 110,000 within the Discharger's city limits. The Discharger's sanitary sewer system serves residential customers as well as commercial and industrial users. The sanitary sewer system consists of approximately 270 miles of sewer mains. Private property owners own the entire length of the service lateral associated with their property; however, the Discharger maintains as a public service the lower portion – from the property line cleanout to the main line – provided a property line cleanout exists and the Discharger is made aware of any structural defects or overflows. The Discharger's sanitary sewer system also includes 2 metered pump stations and 4 smaller, un-metered pump stations. The Santa Clara City Council is the governing body of the Discharger's sewer utility.

The Discharger's sewage collection system includes sewer lines which are now approximately 100 years old. A substantial portion of the sewer lines are 50 years old or older. The Discharger's ageing sewage collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. The structural defects in the Discharger's collection system, which allow I/I into the sewer lines, results in a build-up of pressure which causes sewage system surface overflows ("SSOs"). Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters such as Stevens Creek, Saratoga Creek and South San Francisco Bay, all waters of the United States.

As recorded in the California Integrated Water Quality System ("CIWQS") Interactive SSO Reports, the Discharger's sewage collection system has experienced 19 SSOs during the period June 14, 2007 to June 10, 2012, with a combined volume of 7,041 gallons, 185 gallons of which reached surface waters, according to the Discharger's field reports. For example on March 20, 2009, a spill occurred at 2665 South Drive. According to the spill report, the total volume was 930 gallons, 140 gallons of which reached a surface water.

River Watch also alleges that the Discharger regularly underestimates the duration of its SSOs, thereby underestimating and inaccurately reporting the volume of its SSOs and the volume which reaches gutters, canals and storm drains and adjacent surface waters. The Discharger's Spill Reports, submitted to the State via the CIWQS Interactive SSO Reporting Program, routinely report the estimated spill start time, the time the sewer agency was notified of the spill and the operator arrival time as exactly the same time. It is highly unlikely that these events occurred simultaneously.

In the above-referenced spill report, the spill start time, time the sewer agency was notified and operator arrival time were all listed as 2009-03-20 13:45. Given the strong likelihood that the actual spill start time was significantly earlier than the reported spill start time, the duration substantially longer, and the fact that the volume is estimated as the product of duration multiplied by the estimated flow rate, one can be virtually certain that the actual spill volume was substantially greater than the reported volume, and the actual volume discharged to the adjacent creek substantially greater than the reported volume.

This clear lack of any good faith effort to make realistic estimates of spill start times undermines the reliability of volume estimates.

The reporting of the start time, notification and arrival times as simultaneous appears to be a common practice by the Discharger. On September 15, 2011, a spill occurred at 1700 Civic Center Drive. The Spill Report listed the the start time, notification and arrival times as 9:45. According to the Report the spill reached a storm drainpipe, but all of the wastewater was fully captured and returned to the sanitary sewer system, so there was no discharge to a surface water. In light of the high likelihood that the volume was under-reported, for the reasons stated above, the claim that no untreated wastewater discharged to a surface water is suspect. The reliability of this Report is further undermined by the anomaly that the estimated spill volume is listed as 250 gallons and the estimated volume of spill recovered is listed as 1,000 gallons.

In addition to surface overflows which discharge over land into surface waters, underground leakages ("exfiltration") caused by pipeline cracks and other structural defects result in discharges to adjacent surface waters via underground hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines, have verified the contamination of the adjacent waters with untreated sewage.¹ River Watch alleges that such discharges are continuous wherever ageing, damaged structurally defective sewer lines in the Discharger's sewage collection system are located adjacent to surface waters, including Stevens Creek, Saratoga Creek and South San Francisco Bay.

The Discharger's unlawful discharge of untreated wastewater is a significant contribution to the degradation of South San Francisco Bay, and tributary waters, such as, Stevens Creek and Saratoga Creek, with serious adverse effects on the beneficial uses of

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See the Report of the Human Marker Study issued in July of 2008 and conducted by Dr. Michael L. Johnson, U.C. Davis water quality expert, performed for the City of Ukiah, finding the presence of human derived bacteria in two creeks adjacent to defective sewer lines.

those waters. River Watch members residing in the area have a vital interest in bringing the Discharger's operations of its sewage collection system into compliance with the CWA.

REMEDIAL MEASURES REQUESTED

River Watch believes the following remedial measures are necessary to bring the Discharger into compliance with its NPDES Permits and with the Basin Plan, and to prioritize remedial measures to reflect the biological impacts of the Discharger's ongoing non-compliance:

DEFINITIONS

- A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for gravity mains; manhole inspections for structural defects; and, inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies. The PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections.
- B. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system with the exception of sewer lines located within two hundred (200) feet of surface waters.
- C. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located within two hundred (200) feet of surface waters, including gutters, canals and storm drains which discharge to surface waters.
- D. Significantly Defective: A sewer pipe is considered to be Significantly Defective if the pipe's condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:

- 5 – Most significant defect
- 4 – Significant defect
- 3 – Moderate defect

2 – Minor to moderate defect

1 – Minor defect

REMEDIAL MEASURES

A. SEWAGE COLLECTION SYSTEM INVESTIGATION AND REPAIR

1. The repair or replacement of all sewer lines in the Discharger's sewage collection system located within two hundred (200) feet from surface waters, including gutters, canals and storm drains which discharge to surface waters, which have been CCTV'd within five (5) years and which are Significantly Defective.
2. The completion of Surface Water Condition Assessment of sewer lines which have not been CCTV'd within five (5) years.
3. Within one (1) year after completion of the Surface Water Condition Assessment under section A.2. above, the Discharger will repair or replace all sewer lines which have been found to be Significantly Defective.
4. With respect to sewer lines that receive a Grade of 3 based on the PACP rating system, the Discharger will ascertain whether such lines need to be repaired or re-CCTV'd.
5. Amendment of the Discharger's long term Capital Improvements Plan to provide for a Condition Assessment of its full sewer collection system on a six (6) year cycle, so that the entire system will be CCTV'd every six (6) years.

B. SEWER SYSTEM OVERFLOW RESPONSE AND REPORTING

1. Modification of the Discharger's SSO report form to include the method or calculation used for estimating total spill volume, estimating spill volume that reached surface waters and estimating spill volume recovered.
2. Creation of a listing of nearby residents or business operators who have been contacted to attempt to establish the SSO start time, duration, and flow rate.
3. Taking of photographs of the manhole flow at the SSO site and the San Diego Method array, if applicable to the SSO; or other photographic evidence that may aid in establishing the spill volume.

4. A requirement for water quality sampling and testing whenever it is estimated that fifty (50) gallons or more of untreated or partially treated waste water enters surface waters. Constituents tested for to include: Ammonia, Fecal Coliform, BOD and a CAM 17 toxic metals analysis. If any of the above-listed constituents threaten to exceed water quality objectives necessary to protect the designated beneficial uses of WARM, WILD, REC-1 or REC-2 as set forth in Basin Plan, the Discharger will immediately repair or replace the pipeline determined to be the source of the SSO.
5. The creation of web site capacity to track information regarding SSOs; or, in the alternative, the creation of a link from the Discharger's web site to the State Water Resources Control Board's CIWQS SSO Public Reports. The Discharger will notify all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.

C. SUPPLEMENTAL ENVIRONMENTAL PROJECT - CLEANOUT INSTALLATION AND PRIVATE LATERAL REPLACEMENT FUND PROGRAM

1. Set up of a revolving loan program to provide partial loans for the replacement or repair of private sewer laterals, including installation of property line cleanouts ("loan program").
 - a. An investment of \$55,000.00 by the Discharger into the loan program.
 - b. The loan program will provide a low interest loan to eligible property owners in an amount not to exceed \$2,500.00 for each eligible private sewer lateral requiring repair or replacement, and/or property line cleanout installation. A property owner is considered eligible for the loan program if the Discharger determines that the private sewer lateral is failing, and/or that the property does not have a property line cleanout, and the repair or replacement and/or installation can be completed within one hundred twenty (120) days of the application for the loan.
 - c. Interest rate, financing term, financing amount, and terms of repayment for the loan program to be set by the Discharger.

2. The Discharger will publicize, advertise, and otherwise promote the availability of the loan program to property owners within its sewage collection system, and shall set forth procedures for eligible property owners to apply for the loan program. The Discharger will negotiate group rates with the contractor repairing or replacing a main line, for cleanout installation and lateral repair in conjunction with repair/replacement of the main line to which a group of private laterals are attached, and publicize said group rates. The group rate shall be determined after the Discharger CCTV's the private laterals and determines how many of the eligible property owners will participate in the program.

VIOLATIONS

River Watch contends that from July 7, 2007 through July 7, 2012 the Discharger has violated the requirements of the its NPDES Permits, the Basin Plan and the Code of Federal Regulations as those requirements are referenced in the Discharger's NPDES Permits, and that said violations are continuing. They are evidenced and reported in the Discharger's Self Monitoring Reports, its testing data compiled in compliance with its Permits or other orders of the RWQCB, other documentation filed with the RWQCB or in the Discharger's possession; and, as evidenced by unpermitted discharges due to failures in the Discharger's sewage collection system.

The violations, established in Self Monitoring Reports, raw data and records of the RWQCB, include, but are not limited to, the following categories in the Discharger's NPDES Permits:

Discharge Prohibitions

<u>Violations</u>	<u>Description</u>
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1800	Collection system overflows caused by underground exfiltration - Events in which untreated sewage is discharged from the collection system prior to reaching the Plant. Underground discharges are alleged to have been continuous throughout the 5 year period from July 7, 2007 to July 7, 2012.
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(Order No. R2-2003-0085, Discharge Prohibitions A.6)

(Order No. R2-2009-0038, Discharge Prohibitions , III.D)

Evidence to support the allegation of underground discharge of raw sewage exists in the Discharger's own mass balance data regarding the number of connections in the service area, estimates of average daily volume of wastewater per connection, influent flow volumes

to the Plant reported in Self Monitoring Reports, video inspection of the sewage collection system, and testing of waterways adjacent to sewer lines, including creeks, wetlands, rivers and South San Francisco Bay for nutrients, pathogens and other constituents indicating sewage contamination, such as caffeine.

<u>Violations</u>	<u>Description</u>
25	SSOs, as evidenced in the State Water Resource Control Board's CIWQS Interactive SSO Public Reports, including those reports discussed above. Also, unrecorded surface overflows witnessed by local residents, and surface overflows which allegedly reached a surface water but were inaccurately reported as not having reached a surface water.

(Order No. R2-2003-0085, Discharge Prohibitions A.6)
(Order No. R2-2009-0038, Discharge Prohibitions, III.D)

Order No. R1-2003-0085, Discharge Prohibition A.6: "Discharges of water, materials, or wastes other than storm water, which are not otherwise authorized by this NPDES permit, to a storm drain system or waters of the State are prohibited."

Order No. R1-2009-0038, Discharge Prohibitions III.D: "Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited"

Monitoring Requirements

<u>Violations</u>	<u>Description</u>
20	Failure to monitor, report or adequately describe violations - The majority of these violations occur due to a failure to report violations of Discharge Prohibitions A.6. of Order No. R2-2003-0085 and Discharge Prohibitions III.D of Order No. R2-2009-0038, as well as failure to adequately describe reported violations of said provisions.

CONTACT INFORMATION

River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California. Its address is P.O. Box 817, Sebastopol, CA 95472, www.ncriverwatch.org.

River Watch has retained legal counsel with respect to the issues raised in this NOTICE. All communications regarding the same should be addressed to:

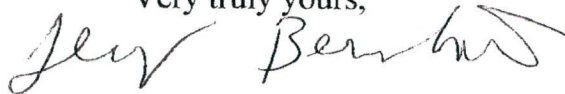
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CONCLUSION

The violations as set forth in this NOTICE effect the health and enjoyment of members of River Watch who reside and recreate in the affected communities. These members use the affected watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shell fish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as alleged in this NOTICE.

River Watch believes this NOTICE sufficiently states grounds for filing suit. At the close of the 60-day notice period or shortly thereafter River Watch intends to file a citizen's suit under CWA § 505(a) against the Discharger for the violations identified in this NOTICE. During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted. However, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that notice period ends.

Very truly yours,



Jerry Bernhaut

JB:lhbm

cc: Richard E. Nosky, Jr.
City Attorney
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Administrator
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